

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

10 FRED WARD,) Case No.: 10-CV-01853-LHK
11 Plaintiff,)
12 v.) ORDER REGARDING DEFENDANTS'
13 UNION PACIFIC RAILROAD COMPANY, ET) REQUEST FOR ORTHOPEDIC
14 AL.,) INDEPENDENT MEDICAL
15 Defendants.) EXAMINATION OF PLAINTIFF

17 In this action, Plaintiff claims that he was injured by falling into a hole at Defendants' premises. The parties had scheduled Plaintiff's independent medical examination (IME) for June 19, 2011. However, due to a scheduling mishap, the IME did not take place. Defendants sought to re-schedule the IME, but have been unable to obtain an agreed-upon date from Plaintiff's counsel. Defendants now request an Order from the Court requiring Plaintiff's IME by a date certain. Plaintiff opposes on the ground that Defendants' request is untimely.

23 Federal Rule of Civil Procedure provides:

24 35. Physical and Mental Examinations

25 (a) Order for an Examination.

26 (1) In General.

The court where the action is pending may order a party whose mental or physical condition — including blood group — is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) Motion and Notice; Contents of the Order.

The order:

- (A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and
- (B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

See Fed. R. Civ. P. 35. Plaintiff has clearly placed his physical condition “in controversy” by seeking damages for pain and suffering, emotional distress, present and future medical expenses, and loss of earnings due to inability to return to work. The Court is disappointed in the parties’ inability to meet and confer and to resolve this issue without unnecessary briefing, merely detailing alleged missed phone calls and lack of communication among counsel.

Accordingly, Plaintiff must submit to an IME with Martha Singer, M.D. in either the Oakland or Emeryville office, **by Monday, August 15, 2011**. As the parties are aware, the dispositive motion filing deadline is August 25, 2011. Thus, the parties should schedule the IME as soon as practicable. The examination shall be limited to a complete medical history, an evaluation of Plaintiff's range of motion, standard orthopedic tests, and, if necessary, X-rays. The examination shall not include any test or procedure that is painful, protracted, or intrusive. Failure to comply with this Order risks sanctions, including dismissal of Plaintiff's case without prejudice.

IT IS SO ORDERED.

Dated: August 4, 2011

Lucy H. Koh
LUCY H. KOH
United States District Judge